



August 3, 2017

Complainant

Superintendent

RE: **FINAL REPORT for In the Matter of *****, 2017-05, Alleged Violations of the Individuals With Disabilities Education Act (IDEA).

This is the Final Report pertaining to the above-referenced state special education complaint (Complaint) filed pursuant to the Administrative Rules of Montana (ARM) 10.16.3662. *** (Complainants or Parents) filed the Complaint on behalf of their adult student, ***, a student who recently graduated from *** in the *** (District). Complainants allege the District violated the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. §1400 et seq., Montana special education laws, Title 20, Ch. 7, Montana Code Annotated (MCA), and corresponding regulation at 34 CFR Part 300 and ARM 10.16.3007 et seq. The District allegedly:

- (1) Failed to provide appropriate transition services to Student, thereby denying Student a free appropriate public education (FAPE); and
- (2) Failed to implement the IEP properly to provide all of the special education services outlined on the IEP.

A. Procedural History

1. On June 5, 2017, the Montana Office of Public Instruction (OPI) received the signed Complaint from the Complainants regarding their adult daughter who had recently graduated from *** with a diploma.
2. Since the time the Complaint was filed, OPI's Early Assistance Program (EAP) attempted to assist the parties in resolving the issues in the Complaint.
3. On June 26, 2017, the Office of Public Instruction's EAP Director concluded the matters alleged in the Complaint were not able to be resolved through the EAP and the OPI sent a Request for Written Response to the District. The Complaint proceeded to investigation.
4. The District's written response was received on July 10, 2017.



5. An appointed investigator conducted interviews with the Student's stepmother, student, individual that student lives with, District superintendent and special education teacher. The Student's father did not participate in the interviews.

B. Legal Framework

The OPI is authorized to address alleged violations of the IDEA and Montana special education laws through this special education state complaint process as outlined in 34 CFR §300.151-153 and ARM 10.16.3662, which occurred within one year prior to the date of the complaint. Pursuant to 34 CFR § 300.151-153 and ARM 10.16.3662, all relevant information is reviewed and an independent determination is made as to whether a violation of federal or state statute, regulation, or rule occurred. Any references to facts outside of the one-year timeframe, June 5, 2016 to June 5, 2017, are included strictly for background information.

C. Findings of Fact

1. Complainants have standing to file this Complaint pursuant to ARM 10.16.3661.
2. Since kindergarten, Student has received special education services from the District under the category of cognitive delay and speech language impairment.
3. Student turned 18 on April 4, 2017. Student provided a letter to District that parents should make educational decisions for Student. Neither a guardianship or other legal documents were provided to the District indicating that someone else could make educational decisions for Student. Student now has the legal authority to make all educational decisions.
4. Throughout high school Student continually expressed an intent to graduate from high school with a regular diploma and attend a local community college.
5. As part of determining continuing eligibility for special education services, Student was evaluated in March 2016. Student was evaluated using the KTEA2 and Woodcock Johnson IV. The math subtest results from the KTEA2 were Math 65, Concepts and Applications 66, and Computation 66. Math results on the Woodcock Johnson IV were Math 59, Broad Mathematics 57, and Calculation 57. Daily living scores on the Vineland were 100 (average) as rated by the school personnel and 68 as rated by the parents.
6. Student also completed various interest inventories and career planning tools to determine what Student wanted to do as a future career. Consistently, student indicated attending



college in future plans; the major changed but recently social work or sociology was the intended major.

7. Although Parents were concerned about Student's independent living skills, the District, based on assessments and observations, were not concerned about Student's independent living skills. Student demonstrated appropriate hygiene, time management, and other functional skills while attending high school.
8. Staff reported that Student was an exceptionally hard worker and high achiever. Student's schoolwork was always completed timely and Student would seek out resources or help when Student had difficulty.
9. Student has not lived with father and stepmother, but recently began visiting them on weekends. Since March of 2017, she has lived with a para-educator who formerly worked with Student.
10. During the 2016-2017 school year, Student received special education services in math, reading, and written expression.
11. Student's February 3, 2016 IEP indicates Student was to receive 87 minutes of math services per week in a special education setting.
12. Student did not receive the math services outlined in the February 3, 2016 IEP and addendums to that IEP during the first semester of the 2016-2017 school year.
13. Student's February 9, 2017 IEP indicated Student was to receive an increased 239 minutes of math services per week in a special education setting.
14. Student struggled with basic math skills including reconciling a checkbook, counting money and measuring.
15. At Student's February 3, 2016 IEP meeting, the provision of one more year of education, including special education services, was discussed. On at least two other later occasions, the option of one more year of schooling was discussed with Student.
16. Student understood that if Student came back for another year of school, Student could not graduate with classmates nor walk across the stage with them.
17. Student informed the school repeatedly that the goal was to graduate in June 2017 with Student's class.
18. Student completed a senior project which set out a five-year plan for Student. In this plan, Student discussed three options: attending community college; attending University of Montana or working at an assisted living center and obtaining aide certification. As part of this plan, Student researched costs and financial aid, disability assistance, living requirements, and transportation.



19. Student's conclusion at the end of the senior project, which was completed at the end of her senior year, was to graduate and attend the local community college.
20. Student has applied for and been admitted to the local community college, but does not plan on attending until fall of 2018.
21. As part of Student's transition services, visits to local colleges, discussions with disability coordinators at post-secondary institutions, contact with vocational rehabilitation services and completion of applications for college or employment were all tasks that Student accomplished.
22. Student also successfully completed a personal finance course earning a B letter grade. This class discussed all aspects of personal finance including banking, budgeting, insurance and loans. Student also took a cooking class as part of the fine arts requirement. Although Student needed assistance with this class and measurement was difficult, Student passed the course.
23. Student's transition program included to graduate from high school and attend college.
24. Student was enrolled in pre-algebra as a junior and in algebra as a senior. Algebra was a required class for graduation. Student successfully completed both of these courses to earn the required credits for graduation with assistance and support.
25. Student for the 2016-2017 school year maintained a 3.5 unweighted GPA.
26. The District agreed to provide 60 hours of compensatory math services for those special education math services that were not provided pursuant to the IEP during the first semester of the 2016-2017 school year. Those services were to be provided over the summer after the completion of the 2016-2017 school year and after Student graduated from high school. Arrangements were made with Student prior to the end of the school year regarding a schedule for receiving the math services 1-1 from a certified teacher.
27. Prior to her graduation, Student requested an independent educational evaluation (IEE). The IEE was to assess Student's IQ only. That evaluation was in the process of being scheduled but had not been completed at the time of this report.
28. Student graduated from high school with a regular diploma on June 3, 2017.
29. Parents, on behalf of Student, notified the District after June 3, 2017 that they did not believe Student had successfully met all the requirements to receive a high school diploma.
30. Parents reported that transition services were inadequate; they believe Student cannot live independently; they believe there was no way Student could complete algebra class independently; and they believe no other alternatives were considered beyond college, which was not a viable option for Student. They were seeking, at a minimum, another year



of special education services primarily focused on math and independent living skills. The Complaint was filed after Student's graduation.

31. Parents and Student's housemate have differing observations on Student's independent living skills. Parents report that Student's bathing skills are inadequate and Student cannot cook a pizza or handle money. Student's housemate concurs that managing a checkbook is difficult, but Student can perform personal hygiene tasks, clean, do basic laundry, cook scrambled eggs and grilled cheese, and maintains employment with increasing hours.
32. Student was not involved with filing the Complaint, but was not opposed to the Complaint. Student believed more services would be beneficial. Student reported that graduating, attending college, and living independently were long-range goals.
33. Student does not have a driver's license nor can Student ride a bicycle. Student's mode of transportation is walking or obtaining a ride from someone.
34. Student did not attend the first day of compensatory services. The principal contacted Student about attendance; the response was Student could not attend until discussed with Parents. The teacher remained available at the school to provide the compensatory services; Student has not participated in any of those compensatory math services.

D. Analysis and Conclusions

Issue 1: Did the District fail to provide appropriate transition services, thereby denying Student a free appropriate public education (FAPE)?

Complainants allege the District failed to provide appropriate transition services to Student and therefore denied Student a FAPE. All Students between the ages of 3 and 21, who are eligible for special education services are entitled to a FAPE. 34 CFR §300.101. The IDEA defines FAPE as special education and related services that:

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the state education agency (SEA), including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the state involved; and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 34 CFR 300.320 through 300.324.

34 CFR 300.117.



FAPE is uniquely tailored to each student through their IEP. A school must offer an IEP reasonably calculated to enable a student to make progress appropriate in light of the student's circumstances. Endrew F. v. Douglas County School District RE-1, 137 S.Ct. 988 (2017).

Specifically, the Complainants allege Student's postsecondary goal of attending community college was inappropriate and that student should have been receiving more life skills training to learn to live independently after graduation. For those students who have reached the age of 16 the IEP must include: (1) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment and where appropriate independent living skills; and (2) the transition services (including courses of study) needed to assist the student in reaching those goals. 34 CFR § 300.320(b).

Transition services are defined as:

- (a) ... a coordinated set of activities for a child with a disability that:
 - (1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
 - (2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes:
 - (i) Instruction;
 - (ii) Related services;
 - (iii) Community experiences;
 - (iv) The development of employment and other post-school adult living objectives; and
 - (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
- (b) Transition services for children with disabilities may be special education, if provided as a specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

34 CFR § 300.43.

As with all special education and related services the types of transition services are determined by the student's IEP team based on the needs of that particular student, not the



disability category or severity of the disability. 71 Fed. Reg. 46,579 (2006).¹ Once a student reaches age 16, that student must also have the opportunity to participate in IEP team meetings that make educational decisions including decisions on appropriate transition services. 34 CFR § 300.327.

Independent living skills are the only transition area that is not required for every student, but included as the IEP team feels appropriate for that student to receive FAPE. 71 Fed. Reg. 46,668 (2006). The provision of appropriate transition services does not mean that the Student will no longer need assistance or be totally independent after the student is no longer eligible for special education services. Once a student graduates, eligibility under the IDEA ceases. 34 CFR § 300.102 (a)(1).² Moreover, appropriate transition services such as independent living skills do not require mastery in order to provide FAPE. Being able to live independently is not the test for whether transition services are appropriate. Cranston School District, 114 LRP 38615 (SEA RI 2015).

Consistently, throughout high school, the District conducted age appropriate transition assessments and developed post secondary goals for Student. Student has participated in IEP meetings and continually stated Student's long-range goals were graduation and attendance at the local community college. Transition services are to consider the student's interests and goals. Student consistently stated community college was the plan. Although the major varied, during Student's senior year, sociology or social work was the career goal. Student investigated, with the assistance of staff, what was involved in attending college including costs, housing, and disability assistance. Student, as outlined in Student's five-year plan, was also considering employment and obtaining aide certification as a back-up plan. At a minimum, the Student had to obtain a high school diploma to be admitted to the community college.

The Complainants alleged Student should not have taken algebra. However, algebra was a required course for graduation. Student was involved with vocational rehabilitation and Student's vocational counselor concurred in Student taking algebra if Student wanted to attend college. Student successfully passed algebra and all other courses required for graduation. Teachers reported that Student was an exceptionally hard worker. Student needed assistance

¹ See also D. v. Mt. Olive Township Board of Education, 63 IDELR 78, 114 LRP 15720 (D. NJ 2014); transition services are determined by the IEP team, which includes the parents, at the time of the development of the transition plan.

² The only remedies that may be available after the student has graduated are compensatory education for failure to provide appropriate transition services or reimbursement for private services. Eligibility for special education services cannot be extended. Dracut School Committee v. Bureau of Special Education Appeals of Massachusetts Department of Elementary and Secondary Education, Massachusetts Department of Elementary and Secondary Education, 737 F. Supp 2d 35, 55 IDELR 66 (D. Mass., 2010).



to successfully complete the course, but that was not unusual for Student in many of her classes. Student regularly sought out assistance when classes were difficult.

The District, through Student's transition plan, and the requirements for all seniors, provided assistance to address many of the obstacles and steps needed to complete Student's goals. Student, with the assistance of teachers and professionals from other agencies, understood what needed to be done to achieve Student's future plans. Other alternatives were considered and pursued. Student is presently employed at an assisted living facility which was an alternative plan outlined in Student's five-year plan. Vocational rehabilitation assisted Student with obtaining employment. Student applied for and was admitted to the community college. Although Student is waiting a year before starting college that does not suggest that Student's transition plans were inappropriate.

On this set of facts, there was a disconnect from responders as to what skills Student has mastered or was able to demonstrate. Everyone agrees that Student has some difficulties, especially in the area of functional math, and Student will likely need assistance in the future. It is difficult to ascertain what Student's true independent living skills are because parents have not lived with her; the housemate has only lived with her since March, 2017 and the district only sees Student in a school setting. Student's assessment results on independent living indicate average ability. The District addressed Student's needs as Student transitioned from high school. Although Student may still exhibit some difficulties now and into the future, that does not mean that Student's transition services were inadequate or inappropriate. The transition plan developed for Student addressed training, education, employment, and independent living taking into consideration Student's interests. **There was no denial of FAPE or violation of Part B of IDEA.**

Issue 2: Did the District fail to implement IEP properly to provide all of the special education services outlined on the IEP?

As soon as possible following the development of an IEP, special education and related services must be made available to the student in accordance with the IEP. 34 CFR § 300.323(c). The definition of FAPE specifically references the provision of special education and related services as provided in conformity with an IEP. 34 CFR § 300.17. The Ninth Circuit in Van Dyun v. Baker School District, 502 F.3d 811, 47 IDELR 182 (9th Cir. 2007), adopted the materiality standard for failure to implement an IEP. "A material failure occurs when the services a school provides to a disabled child fall significantly short of the services required by the child's IEP." Id. at 823. Under the materiality standard the student does not have to suffer demonstrable educational harm in order to prevail. Id. Therefore, if a material failure to implement is found, it may be considered a denial of FAPE.



There is no dispute that Student did not receive all the math services outlined in the IEP during the first semester of the 2016-2017 school year. Pursuant to Student's February 3, 2016 IEP, Student was to receive 87 minutes of math services per week in a special education setting. Although the student was successfully completing required high school math requirements for graduation, she was still struggling with functional math skills. Once the parents brought the concern to the District's attention, the IEP team increased Student's math service minutes to 239 minutes per week from February 9, 2017 to June 3, 2017. Student began receiving the special education math services as set out on her IEP. Additionally, sixty hours of compensatory education was offered to Student over the summer after graduation. Student was involved in the scheduling of the compensatory education, but Student has not attended those special education math services. When a student has reached the age of majority, the educational decisions are the responsibility of the student unless the court has ordered otherwise. ARM 10.16.3502; 34 CFR § 300.520. Student had reached the age of majority at the time of the filing of the Complaint and was the person who had educational decision-making authority and the right to choose whether or not she would take advantage of the compensatory education offered by the District. **There was a denial of FAPE for failure to materially implement the required math special education services, however, the District remediated the denial of FAPE by offering increased math services for the last semester of the 2016-2017 school year and offering additional compensatory math services. That process addressed the denial of FAPE. Student's choice to not participate in compensatory services did not recreate the original denial of FAPE or rise the level of a new denial of FAPE.**

E. Disposition

For the above reasons no violations were found against the District.

Frank Podobnik, Division Administrator
Special Education Division

c: Mandi Gibbs, Dispute Resolution/EAP Director
Megan Morris, Kaleva Law Office